

ALM CREATIVE LIMITED TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

1.1 "Alm" means Alm Creative Limited (Trading as Anna Mollekin Design), its successors and assigns or any person acting on behalf of and with the authority of Alm Creative Limited.

1.2 "Client" means the person/s requesting Alm to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.

1.3 "Services" shall mean all services provided by Alm to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Incidental Items as hereinafter defined).

1.4 "Incidental Items" shall mean all goods, documents, designs, drawings, data, graphics, pictures, trademarks, and other materials to be deposited incidentally by Alm in the course of it conducting, or supplying to the Client, any Services.

1.5 "Price" shall mean the cost of the Services as agreed between Alm and the Client subject to clause 4 of this contract.

2. ACCEPTANCE

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by Alm.

2.2 These terms and conditions may only be amended with Alm's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Alm.

2.3 Once accepted by the Client, Alm's written quotation shall be deemed to interpret correctly the Client's instructions. Alm shall not be responsible for errors or omissions due to oversight or inadvertent misinterpretation of those instructions.

2.4 Alm reserves the right to invoice the Client for any work done on orders that have become inactive or stale after a period of greater than thirty (30) days.

3. CHANGE IN CONTROL

3.1 The Client shall give Alm not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Alm as a result of the Client's failure to comply with this clause.

4. PRICE AND PAYMENT

4.1 At Alm's sole discretion the Price shall be either:

(a) as indicated on invoices provided by Alm to the Client in respect of Services provided; or

(b) Alm's quoted Price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 Alm reserves the right to change the Price:

(a) if a variation to the Services is requested (including any applicable designs or specifications); or

(b) where additional Services are required as per clause 5; or

(c) in the event of increases to Alm in the cost of labour or materials which are beyond Alm's control.

4.3 At Alm's sole discretion, a deposit of up to fifty percent (50%) may be required immediately upon acceptance of Alm's quotation.

4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Alm, which may be:

(a) on completion of the Services:

(b) for approved clients, twenty (20) days following the end of the month;

(c) the date specified on any invoice or other form as being the date for payment; or

(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Alm.

4.5 Payment may be made by electronic/ on-line banking, or by any other method as agreed to between the Client and Alm.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Alm an amount equal to any GST Alm must pay for any provision of Services by Alm under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. VARIATIONS

5.1 When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Client of his original instructions or by the manuscript copy being, in Alms opinion, poorly prepared or by the Client's requirements being different from those originally submitted or described may be charged to the Client and shown as extras on the invoice.

5.2 All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.

5.3 Any tabulated work and/or foreign language included in the job but not contained in the manuscript originally submitted for the purpose of estimating may be charged to the Client and shown as extras on the invoice.

5.4 Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought at the Clients request for the job.

5.5 Where the performance of any contract with the Client requires Alm to obtain products and/or services from a third party, the contract between Alm and the Client shall incorporate and shall be subject to the conditions of supply of such products and/or services to Alm, and the Client shall be liable for the cost in full including Alm's margin of such.

5.6 Alm is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Should a physical sample be required, this will be

provided on request by the Client and will be charged for as an extra including return freight, the charge will be contra against final invoice.

5.7 When style, type or layout is left to Alm's judgement, then the Client makes further alterations to the copy this will be invoiced as an extra.

6. PROVISION OF SERVICES

6.1 Any time specified by Alm for provision of the Services is an estimate only and Alm will not be liable for any loss or damage incurred by the Client as a result of any delay thereof. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that Alm is unable to provide the Services as agreed solely due to any action or inaction of the Client then Alm shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

6.2 At Alm's sole discretion delivery of the Goods shall take place when Alm (or Alm's nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address.

6.3 At Alm's sole discretion, any costs of delivery are included in the Price.

7. PROOF READING

7.1 Whilst every care is taken by Alm to carry out the instructions of the Client, it is the Clients responsibility to undertake a final proof reading. Alm shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Client's alterations require additional proofs, this shall be invoiced as an extra under clause 4.2.

8. RISK

8.1 Irrespective of whether Alm retains ownership of any Goods, all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as Alm may repossess the Goods in accordance with clause 10.3(f). The Client must insure all Goods on or before delivery.

8.2 Alm reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Goods as a result of the Client's failure to insure in accordance with clause 8.1.

8.3 The Client acknowledges and agrees that Alm shall not be held liable for any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of Alm.

8.4 Alm shall not be held liable for inks wearing off through general wear and tear.

8.5 While every effort will be taken by Alm to match PMS colours, Alm will take no responsibility for any variation due to substrates, half tones and/or detailed graphics between sale samples (including but not limited to virtual or physical samples) and the final Goods.

8.6 The Client acknowledges that a trimming variance of plus or minus two millimetres (2mm) shall be acceptable due to the guillotine cutting system.

8.7 The Client acknowledges it is their sole responsibility to ensure they have the right

to use any written content, logos, images or fonts supplied to Alm for the work being undertaken for them.

9. CLIENT'S PROPERTY AND MATERIAL SUPPLIED BY CLIENT

9.1 Where the Client supplies materials:

- (a)** the Client acknowledges that Alm only accepts artwork in the format of jpg, pdf, eps or tiff or otherwise agreed to;
 - (b)** adequate quantities shall be supplied to cover spoilage. Sheets and other materials shall not be counted or checked when received unless requested by the Client in writing. An additional charge may be made by Alm in respect of any such counting or checking requested by the Client;
 - (c)** Alm shall be free to dispose of them at the end of three (3) months after the receipt of them and to accept and retain the proceeds, if any, to cover their own costs in holding and handling them.
 - (d)** Alm accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.
- 9.2** Any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Client deemed necessary by Alm to ensure correctly finished work shall be invoiced as an extra as per clause 4.2.

10. TITLE

10.1 The Client acknowledges and agrees that the Client's obligations to Alm for the provision of Services shall not cease, and ownership of any Goods shall not pass, until:

- (a)** the Client has paid Alm all amounts owing for the particular Services; and

- (b)** the Client has met all other obligations due by the Client to Alm in respect of all contracts between Alm and the Client.

10.2 Receipt by Alm of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Alm's ownership or rights in respect of the Services, and this agreement, shall continue.

10.3 It is further agreed that:

- (a)** the Client is only a bailee of the Goods and must return the Goods to Alm immediately upon request by Alm;
- (b)** the Client holds the benefit of the Client's insurance of the Goods on trust for Alm and must pay to Alm the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c)** the Client must not sell, dispose, or otherwise part with possession of the Goods. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of sale of the Goods on trust for Alm and must pay or deliver the proceeds to Alm on demand.
- (d)** the Client should not convert or process the Goods or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of Alm and must dispose of or return the resulting product to Alm as Alm so directs.
- (e)** the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Alm;
- (f)** the Client irrevocably authorises Alm to enter any premises where Alm believes the Goods are kept and recover possession of the Goods.

11. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

11.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a)** these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b)** a security interest is taken in all Goods and collateral (accounts) – being a monetary obligation of the Client to Alm for Services – that have previously been supplied and that will be supplied in the future by Alm to the Client.

11.2 The Client undertakes to:

- (a)** sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Alm may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b)** indemnify, and upon demand reimburse, Alm for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c)** not register a financing change statement or a change demand without the prior written consent of Alm.

11.3 Alm and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

11.5 Unless otherwise agreed to in writing by Alm, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

11.6 The Client shall unconditionally ratify any actions taken by Alm under clauses 11.1 to 11.5.

12. CLIENT'S DISCLAIMER

12.1 The Client hereby disclaims any right to rescind, or cancel any contract with Alm or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by Alm and the Client acknowledges that the Services are purchased relying solely upon the Client's skill and judgement.

13. DEFECTS, ERRORS AND OMISSIONS

13.1 The Client shall inspect the Services on completion (Goods on delivery) and shall within fourteen (14) days of such time (being of the essence) notify Alm of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Alm an opportunity to review the Services (inspect the Goods) within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect, error, omission or damage. For defective Services, which Alm has agreed in writing that the Client is entitled to reject, Alm's liability is limited to either (at Alm's discretion) rectifying the Services (replacing the Goods) or re-providing the Services. In respect of any shortfall, Alm's liability to the Client is limited to making up that shortfall.

13.2 Goods will not be accepted for return other than in accordance with 13.1 above.

14. CONSUMER GUARANTEES ACT 1993

14.1 If the Client is acquiring Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the provision of Services by Alm to the Client.

15. INTELLECTUAL PROPERTY

15.1 All know-how, drawings, specifications, customer lists, data, pricelists, catalogues, sales and technical bulletins, and all other technical information supplied by Alm to the Client is vested in Alm and is considered Confidential Information and must not be copied, lent or used without Alm's written consent. Furthermore, sketches, painting, photographs, designs or typesetting furnished by Alm, dummies, models or the like devices made or procured and manipulated by Alm and negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from Alm's original design, or from a design furnished by the Client, remain the exclusive property of Alm unless otherwise agreed upon in writing.

15.2 Alm does not supply or handover any source files, development files, fonts, or originals of illustrations; Alm will supply png, jpg, pdf, or eps files to the Client.

15.3 Sketches and dummies submitted by Alm on a speculative basis shall remain the property of Alm. They shall not be used for any purpose other than that nominated by Alm and no ideas obtained there from may be used without the consent of Alm.

Alm shall be entitled to compensation from the Client for any unauthorised use of such sketches and dummies.

15.4 Where Alm has designed or drawn Goods for the Client then the Client undertakes to acknowledge Alms design or drawings in the event that images of the Incidental Items are utilised in advertising or marketing material by the Client.

15.5 The Client warrants that all designs, specifications or instructions given to Alm will not cause Alm to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Alm against any action taken by a third party against Alm in respect of any such infringement.

15.6 The Client agrees that Alm may (at no cost) use for the purposes of marketing, promotion, advertising, or entry into any competition, the Goods designed or drawn by Alm for the Client.

15.7 The copyright in any photography work resulting from the Services supplied by Alm to the Client shall remain Alm's property. Upon final payment of all monies due by the Client to Alm under these terms and conditions limited copyright ownership passes to the Client on the following conditions:

- (a)** the digital photographs are the Client's property strictly for the agreed use for reproduction and giving of photographs to the agreed parties;
- (b)** the Client will not re-use or sell the photographs for profit;
- (c)** the Client acknowledges and agrees that Alm can use the photographs for promotional use and for any other use associated with Alm's normal business activities.

16. DEFAULT AND CONSEQUENCES OF DEFAULT

16.1 Interest on overdue invoices shall accrue

daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Alm's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Client owes Alm any money the Client shall indemnify Alm from and against all costs and disbursements incurred by Alm in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Alm's collection agency costs, and bank dishonour fees).

16.3 Without prejudice to any other remedies Alm may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Alm may suspend or terminate the provision of Services to the Client. Alm will not be liable to the Client for any loss or damage the Client suffers because Alm has exercised its rights under this clause.

16.4 Without prejudice to Alm's other remedies at law Alm shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Alm shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Alm becomes overdue, or in Alm's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. CONFIDENTIALITY

17.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

18. CANCELLATION

18.1 Alm may cancel any contract to which these terms and conditions apply or cancel the provision of Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice Alm shall repay to the Client any sums paid in respect of the Price. Alm shall not be liable for any loss or damage whatever arising from such cancellation.

18.2 In the event that the Client cancels the provision of the Services, the Client shall be liable for any loss incurred by Alm (including, but not limited to, any loss of profits) up to the time of cancellation.

18.3 Cancellation of orders for Goods made to the Client's specifications, or for nonstocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. PRIVACY ACT 1993

19.1 The Client authorises Alm or Alm's agent to:

- (a) access, collect, retain and use any information about the Client;
- (i) (including any overdue fines balance

information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or

(ii) for the purpose of marketing products and services to the Client.

(b) disclose information about the Client, whether collected by Alm from the Client directly or obtained by Alm from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

19.2 Where the Client is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.

19.3 The Client shall have the right to request Alm for a copy of the information about the Client retained by Alm and the right to request Alm to correct any incorrect information about the Client held by Alm.

20. UNPAID SELLER'S RIGHTS

20.1 Where the Client has left any item with Alm for repair, modification, exchange or for Alm to perform any other service in relation to the item and Alm has not received or been tendered the whole of the Price, or the payment has been dishonoured, Alm shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while Alm is in possession of the item;
- (c) a right to sell the item.

20.2 The lien of Alm shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

21. GENERAL

21.1 The failure by Alm to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Alm's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton Court of New Zealand.

21.3 Except as expressly set out in this agreement, all representations, conditions and warranties (express or implied) applying between the parties, whether statutory or otherwise are excluded as far as the law allows.

21.4 Alm shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Alm of these terms and conditions (alternatively Alm's liability shall be limited to damages which under no circumstances shall exceed the Price).

21.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Alm nor to withhold payment of any invoice because part of that invoice is in dispute.

21.6 Alm may license or sub-contract all or any part of its rights and obligations without the Client's consent.

21.7 The Client agrees that Alm may amend these terms and conditions at any time. If

Alm makes a change to these terms and conditions, then that change will take effect from the date on which Alm notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Alm to provide Services to the Client.

21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

21.9 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.